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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,130	08/20/2003	Anatoly Gosis	14100 (6365/89516)	5322
44986	7590	01/24/2006	EXAMINER	
WELSH & KATZ, LTD. (ILLINOIS TOOL WORKS)			ELKINS, GARY E	
120 S. RIVERSIDE PLAZA			ART UNIT	
CHICAGO, IL 60606			PAPER NUMBER	

3727

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/644,130

Applicant(s)

GOSIS ET AL.

Examiner

Gary E. Elkins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 and 7-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 20031128, 20050214.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I, Subgroup IV in the reply filed on 21 November 2005 is acknowledged. Claims 1-5 and 7-12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim.

### ***Claim Rejections - 35 USC § 112***

2. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The following each lack antecedent basis in the claims, i.e. each is only inferentially set forth: lines 6, 7, 8, 10, 13-15, 19, 20 and 21, "the main body" (only a main body portion was previously set forth), "both first closure panels side walls" (no side walls were previously defined with respect to the closure panels or the end closures), "the main body side walls" (the side walls were previously defined with respect to the main body "portion"), "the main body", "the main body side walls", "their junctures with the first closure panels", "the first closure panels side walls", "the main body", "the first closure panels side walls", "the main body bottom wall", "the main body side wall" and "the main body bottom wall".

It is noted that the "end closures" as set forth in line 5 appear to be formed by closure panels and side panels. However, the side panels appear to be part of the end closures as opposed to the end closure "panels", as best understood, i.e. the claim is defining the side panels of the end closures as part of the "end closure panels" which is confusing.

Lines 13 and 14 of the claim are unclear. It is not understood where the “junctures” of the main body side walls with the first closure panels are located. It would appear that the main body side walls (26) form a juncture with the end closure side walls (34) and with the main body portion bottom wall (24). No “juncture” is seen between the main body portion side walls (26) and the first closure panels 28, as best understood.

In line 20, “the main body side wall” is unclear since the main body portion includes a plurality of opposing side walls as set forth in lines 3 and 4.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claim 6 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 7 of U.S. Patent No. 6,896,174 in view of Boitel (fig. 1 emb).

Claim 7 of the patent includes all limitations of claim 6 of the application except the limitation that a length of one of the second closure panels is about equal to a length of the main body portion. Boitel teaches that it is known to make closure panels (9, 19) with an overlap adjacent

one end (18) of the container and with one of the closure panels (9) with a length about equal to a length of a main body portion (1, 6, 7). It would have been obvious to make the length of the closure panels in the claim 7 construction of the patent with lengths as taught by Boitel to provide a stronger seam along the top of the container and to allow a continuous top to be formed. It is noted that this rejection and that in paragraph 6 below are based upon the fact that the inventors of this application are also listed as some of the inventors of U.S. Patent No. 6,896,174. If common ownership at the time the invention was made is applicable and established, the rejection under 35 USC 103 in paragraph 6 below will be withdrawn.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gosis et al (US 6,896,174) in view of Boitel (fig. 1 emb). Gosis et al discloses all structure of the claimed configuration except formation of a length of one of the second closure panels about equal to a length of the main body portion. Boitel teaches that it is known to make closure panels (9, 19) with an overlap adjacent one end (18) of the container and with one of the closure panels (9) with a length about equal to a length of a main body portion (1, 6, 7). It would have been obvious to make the length of the closure panels in Gosis et al with lengths as taught by Boitel to provide a stronger seam along the top of the container and to allow a continuous top to be formed.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over France '404 in view of any one of Koehler, Cornell et al or Himmelreich. France '404 discloses all structure of the claimed configuration except formation of the configuration as a rigid unit. Each of Koehler, Cornell et al and Himmelreich teaches that it is known to make a container unit from rigid material with folds formed between the rigid sections. It would have been obvious to make the container of France '404 as a rigid unit as taught by any one of Koehler, Cornell et al or Himmelreich to provide a stronger container with less change of damage during use. It is noted that the container unit of France '404 is considered to be "preformed" insofar as it is formed from a blank and certain sections are folded upwardly prior to final completion of the container. Also, note is made that the length of the panels (3) in France '404 are about equal to the length of the main body portion (1) as claimed.

### *Conclusion*

The remaining cited prior art is illustrative of the general state of the art.

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

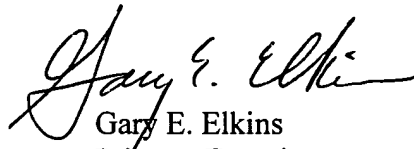
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file

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Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.

  
Gary E. Elkins  
Primary Examiner  
Art Unit 3727

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22 January 2006